

Congress of the United States
Washington, DC 20515

February 7, 2008

The Honorable Henry M. Paulson, Jr.
Secretary, U.S. Department of Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

The Honorable Michael Mukasey
Attorney General, U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Dear Secretary Paulson and Attorney General Mukasey:

We are writing to express our strong objections to Department of Justice's (DoJ) recent letter concerning its opinions on the structure of clearing and settlement services in the U.S. futures industry. More than six months after the Justice Department cleared the Chicago Mercantile Exchange/Chicago Board of Trade (CME/CBOT) merger and more than two months after Treasury's comment period regarding a financial market competitiveness initiative ended, DoJ filed its comment letter with Treasury, an approach that raises concerns about both the substance of the letter and the manner in which it was filed. The opinions in DoJ's comment letter are inconsistent with its earlier determination to approve the CME/CBOT merger.

DOJ's actions had an immediate negative effect on the CME Group's shareholders; its stock declined yesterday by \$103.55 (17.6%), reducing its shareholder's market capitalization by approximately \$5.5 billion. One commissioner of the Commodity Futures Trading Commission (CFTC) stated, "The DOJ staff letter has, unfortunately, roiled the markets; this is precisely the kind of behavior that government regulators are supposed to take ordinary care and attention to avoid."

DOJ justified its comments on the ground that the current clearing system might impose, "unnecessary restraints on competition [that] threaten the ability of the U.S. financial markets to adapt to changing dynamics, including the increasingly global nature of those markets."

However, Congress has been analyzing derivative clearing for several years, starting with the House passage of the Commodity Futures Modernization Act of 2000. Congress was concerned with the competitiveness of U.S. markets and undertook a major overhaul of the regulation of futures markets and carefully crafted a new set of requirements regarding the regulation of derivative clearing organizations. The House Committees on Energy and Commerce, Financial Services and Agriculture each conducted hearings regarding the effectiveness of that legislation and found that the Commodity Futures

Modernization Act contributed to the success of U.S. futures in the global derivatives markets. Additionally, the Senate Committee on Agriculture, Nutrition, and Forestry submitted a thorough report on the Commodity Futures Modernization Act that included a detailed examination of the derivatives market. Finally, Congress is currently working to reauthorize and strengthen the CFTC as part of the latest Farm Bill.

The CFTC has been charged with continuing oversight of derivative clearing organizations, and we are confident that it will continue its already vigorous oversight and report to Congress any concerns regarding changes to the structure Congress put in place necessitated by the "changing dynamics" cited by the Department of Justice.

We respectfully request clarification of the content of the Department of Justice comment letter, why it was filed two months after the deadline and if the Department of Justice considered the letter's influence on the markets prior to issuance of the letter. We look forward to receiving your response.

Sincerely,



Richard J. Durbin
U.S. Senator



Rahm Emanuel
Member of Congress